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# ESSAY

## NAVIGATING THE DARK MORASS: A FIRST-YEAR STUDENT'S GUIDE TO THE LIBRARY

MAUREEN STRAUB KORDESH†

You have probably seen many movies, television shows, and pictures featuring lawyers, and in the background are always lots of thick books neatly—impressively—looming (at least when the lawyer is trying to impress the public). *Now* you may be thinking to yourself: “Oh, my God, I’m going to have to read all those books or that lawyer (the one in the picture) will have me for lunch, or maybe even just an appetizer.”

Well, guess what? You do not have to read them all. She has not read them all, either. So what makes her different from you? First, she has the analytical skills to make good decisions about how to solve her client’s problem. Second, she knows what resources are out there, and how to find the specific ones she needs to help her get started. This reading will focus on the latter skill: identifying and finding resources.

If you have been to the library, you may have reacted by trying to get your tuition back. No one could possibly master all that material, right? There is no way *you* could master all that material, right? *RIGHT*. You are not supposed to master all that material. The whole idea is to give you the skills, the filter, if you will, to figure out which few resources you need to solve any given problem. There are *lots* of resources; people have *lots* of different problems; there will only ever be *one* of you. I would like to give

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you a few categories, or code words, to help you put all of these resources into a manageable order. The two questions you will always ask are: What? How much? The first part of this reading will focus on what. The second part will discuss how much. The third part contains a non-comprehensive discussion of materials you will probably encounter in your first-semester travels.

## I. AVAILABLE LEGAL RESOURCES

### A. *Primary or Secondary?*

You can walk through the entire library and, once you know the difference, label *every single* resource as either primary or secondary. A *primary* source is one which is created by one of the three branches of government while acting in its law-making capacity. Now that is just a fancy way of talking about the cases judges decide, the statutes that Congress or the state legislature or the city commission pass, or the regulations put out by the EPA or the FTC or the Michigan Department of State, or the Susquehanna Township Water Authority. There are a few other kinds of primary authority, but for your purposes (staying oriented, saving your sanity, etc.) these are the most common kinds of "primary" authority. (That is what lawyers call it: "primary authority." That's because it might be in a book, or on a computer, or in a pamphlet. Also, we are obsessed with authority, either because we want to know which rule to follow, or which rule we are about to break. "Authority" is a good term for that.)

Also, not everything that judges, legislatures, and administrative agencies do is lawmaking. Legislatures caucus, hold committee meetings, engage in debates, hearings, town meetings, and back room meetings, but only those actions that conform to the legislative process in accordance with proper parliamentary procedure are properly called "primary" authority. For as much paper as Congress produces (and it produces a lot!), for example, only those actions that have been properly introduced, been properly reported to and out of committee, been subject to floor debate, been sent over to the other chamber, been agreed upon by both chambers, and been signed by the President, are "primary" authority. Similarly, a great deal of what administrative agencies do cannot be viewed by you as a lawyer as "primary" authority. For example, many cases that are heard by administrative law judges—a Social Security eligibility hearing, perhaps—do not have any effect beyond the immediate case. Lawyers do not have

to refer to them when they come back to the court that decided that case, and a judicial judge (don't ask, yet) need not take any notice of the legal interpretation given by that other judge if he does not want to take such notice. More of what Article III judges and their state counterparts do is "primary" authority, but only when they are acting in their law-making capacity are they creating "primary" authority. Thus, a published judicial opinion is "primary" authority but an unpublished opinion is not—usually.

*Secondary* authority is everything else. See, that was easy, wasn't it? If the resource is not a published case, a properly passed statute, or a properly promulgated regulation, it is almost certainly secondary authority. Secondary authority might be defined as those resources that help us to understand what the law is in other states (lawyers like to call them "jurisdictions;" it is harder to spell and it makes you sound smart) or other areas of the law, but the person or association putting it out cannot make anyone abide by it. Thus, a legal encyclopedia entry on the law of consideration, though it may be the most coherent and thoughtful thing you have ever read on the concept of consideration (a concept that does not lend itself to coherence, if you ask me), cannot be the sole basis for your advice to a client, or your argument to a judge. Nor could you rely solely on Professor Corbin's, or Williston's, or Farnsworth's (or Cozzillio's, Corgill's, or Van Tassel's) explanation of the law of consideration. No matter how smart these writers are, no matter how good the explanations are, they were not generated by someone in a law-making capacity. Therefore, the explanations are "secondary" authority. (As a practical matter, Corbin's discussion of the law of consideration may be primary authority in a jurisdiction, but only if a legislature or a judge explicitly adopted that language while acting in a law-making capacity.) Commonly included in the list of secondary authority are: periodicals, books, treatises, legislative history, regulatory history, encyclopedias, dictionaries, legal newspapers, Restatements of the Law, uniform laws, annotations, and case squibs.

Finally, there is a category of secondary authority that is almost like tertiary authority. That is the stuff that helps you find the stuff you need, both primary and secondary. These are commonly called "finding aids." Not surprisingly, finding aids help you to find authority. As we already noticed, there is a lot of stuff in a law library. Lawyers have become particularly adept at putting specific types of authority into categories, at cross-referencing, indexing, synopsising, and making all that stuff accessible.

For example, you can find cases grouped by issue in a finding aid called a digest; you can find legal journals in something called the Index to Legal Periodicals, or the Current Law Index; every state and federal jurisdiction has an index for its statutes, so you can find them by issue or subject. This is an extraordinarily useful layer of secondary authority, and good lawyers know how to use these finding aids efficiently.

So one way to think about what resources lawyers use is to ask yourself whether something is primary or secondary authority.

### *B. Mandatory or Persuasive Authority?*

Another way of dividing up legal materials is to ask whether something is mandatory or persuasive authority. *Mandatory* authority can only be primary authority: cases, statutes, regulations. It is authority that must be included in your analysis of what the outcome is likely to be or in your advocacy of what the outcome should be. You cannot ignore it because those who make the law cannot ignore it. You violate your ethical duty to your client, the court, and the profession if you *do* ignore it.

Now, having said all that, I would also like to add that not all primary authority is mandatory. Some primary authority is mandatory some of the time. I do not think that there is any primary authority that is mandatory all the time. The Golden Rule probably should be, but if it were, we might not have jobs. If your client is the City of New York, then you have to incorporate the municipal statutes passed by the New York legislature when you give your client advice. However, even though the municipal law of Pennsylvania is also primary authority (because it was passed by the legislature of Pennsylvania in its capacity as a law-making body), you need not worry about it when you are giving advice to the City of New York; Pennsylvania law is not mandatory law in New York. The difference is that one kind of authority is primary *and* mandatory while the other authority is only primary. It is not mandatory. It is persuasive.

*Persuasive* authority is everything else. All primary authority to which you need not pay attention, and all secondary authority is persuasive. The question of what is mandatory and what is persuasive can only be answered after a two-step inquiry (lawyers love two-step or two-tier tests: it makes them feel complex and sophisticated). First, you have to figure out whether the authority is primary or secondary. You are pros at that now. Second, you

have to figure out who will be making the decision based on the work you do, and whether that primary authority is something they have to worry about. If you have a client with a free speech case, you are probably going to have to worry about the Federal Constitution. If the problem arose because your client was in a federal courthouse wearing a jacket that sported the slogan "FUCK THE DRAFT" and got arrested for disorderly conduct, then you are definitely going to have to worry about the Federal Constitution. (This fact pattern is taken from *Cohen v. California*, 403 U.S. 15 (1971).) In that circumstance, the disorderly conduct statute your client allegedly violated is primary and mandatory and, because you are contesting the constitutionality of that statute, the Federal Constitution is primary (because it was created by a governmental body in its law-making capacity) and mandatory (because the legal shoe fits the particular problem, so to speak).

On the other hand, if your client was playing her electric guitar on volume setting 10 at three o'clock in the morning and got arrested for disorderly conduct, chances are pretty good that the Federal Constitution is not relevant to the resolution of this problem. So, although it clearly is still primary authority (the Constitution was still created by a governmental body in its law-making capacity), *in this situation* the Federal Constitution is not mandatory authority. Mandatory authority would be whatever ordinance your client allegedly violated, and any case that has interpreted what that ordinance means, so long as it is a case that the judge in your jurisdiction *has* to follow (for example, cases by your state's supreme court). If you won the free speech case, the disorderly conduct statute would still be viewed as primary authority, but it would no longer be mandatory because it would have been found to be unconstitutional. If you won the guitar case, the statute or ordinance would still be both primary authority and mandatory authority: you would have just convinced the prosecutor or judge that the ordinance did not apply *in this case*. It is still good law and your clients—and you—will still have to watch their manners when playing guitar.

As you can see, making a decision about whether authority is mandatory or persuasive is partly a matter of lawyerly judgment. When I said that the guitar client could not use the Constitution as mandatory authority, I had made a judgment that the First Amendment claim would not be viable. That is a judgment that I made as a lawyer. It led me to the conclusion that the Constitu-

tion would be, at best, persuasive authority in this situation. A major component of your legal education will be to learn enough law and develop enough analytical and judgment skills to be able to make good decisions about what claims your clients have, and what issues you can plausibly raise. Once you have made those thoughtful and reasoned decisions based on your professional expertise, you are then in a position to decide: “mandatory authority, persuasive authority; mandatory authority, persuasive authority.”

So, in addition to figuring out whether a resource is primary or secondary, you will also be able to classify it as mandatory or persuasive.

### C. *Precedent and Stare Decisis*

The final division on your three-dimensional matrix is the question of whether an authority is precedent and/or stare decisis. Precedent is a noun; stare decisis is an attitude. Precedent is a term that is used in describing judicial opinions—cases—which furnish an example for later cases that have similar facts and involve the same or similar question of law. Stare decisis is a policy that judges will decide two cases with the same facts in the exact same way. You have heard the adage that the United States is a system of laws, not men. Stare decisis is one of the principles that allows us to remain a system of laws. Stare decisis makes it more difficult for a judge to decide a case according to personal predilections. If the principle is clear and the facts are similar to a case already decided in the jurisdiction by a judge in a higher court, then a judge will usually decide the new case the same way. Even judges at the same level will try very hard to follow the precedents of their brethren. Stare decisis requires courts to move cautiously in overruling principles established by earlier decisions, even in the supreme courts. Stare decisis provides the legitimacy of consistent decision-making.

Any judicial opinion, then, is precedent if it involves the same or similar facts and the same or similar question of law. This universe may be very small on any given case. It can also be quite large. When you are reading judicial opinions, you will be making a specialized judgment that, not only is this particular authority primary, and not only is it mandatory or persuasive, but also that it is *relevant*. That is really the question that “precedent” answers. If you have a case interpreting a disorderly conduct statute in your jurisdiction, it will be precedent—relevant—only if it

involves similar facts and the same question of law. If the decided case resolved that persons playing guitar at volume setting 10 in an agricultural zone would not be subject to the statute, it is not precedent for a dispute about whether a 13-year-old may be cited for playing guitar at volume setting 10. The decided case—clearly primary authority—is relevant to the question of *where* the statute may be enforced. It is not relevant to the question of *who* is subject to its constraints. Precedent is case law that is primary because judicial opinions are generally primary, and relevant because it is similar to the case you are trying to resolve. It may also be mandatory because it was decided by a judge who can make your judge abide by it.

The question of *stare decisis* is conceptually a little different. *Stare decisis*, as I wrote before, is an attitude, a policy, that judges will decide similar cases similarly for all time. The problem, of course, is that two cases with the same facts may require radically different outcomes for reasons that have nothing to do with the immediate cases themselves. Times change, statutes replace the common law, even abrogate it (that is the legislature scoring a coup d'etat against the courts), and other areas of the law may change the legal relevance of certain kinds of facts, even though the change has not yet been faced in your area of the law.

For example, the definition of what kinds of people may constitute a family was quite stable for a long time. It was a man and woman, legally married, and their biological or legally adopted offspring. A biological offspring could not inherit the father's estate if the father had not been married to the mother and had not recognized the child as his. Some states—not all of them—recognized “common-law” marriages, an informal union recognized by the courts and conferring the benefits of legal marriage under certain facts. The biological child of such a union could, after getting a court to recognize the marriage, inherit the father's estate. Now, in some jurisdictions, if a person can establish paternity, that person might inherit the father's estate even though the parents never made any pretense of being married. There is also litigation over whether the children who grew up with “psychological” parents, perhaps even in same-sex unions, may inherit the non-biological, non-adoptive, homosexual parent's estate.

Such litigation would have been unthinkable thirty years ago. The definition of who is a family has changed. *Stare decisis* allows for evolution like this.



In the example I gave above, “illegitimate” children of the 19th century and a good part of the 20th were a steadily growing segment of the population and quite a sizable one before courts began to reassess their treatment of them. Attitudes had changed about who should bear the burden of the out-of-wedlock birth, and courts decided that it was unfair to burden the child, who had had less to do with that status than anyone involved. Courts could see that long before the change actually came, but *stare decisis* requires them to make change conservatively, to protect the rule of law.

Now you have assessed whether authority is primary or secondary, mandatory or persuasive, and whether certain interpretive cases have precedential value and will be followed under the policy of *stare decisis*. You have done a lot of hard work and eliminated a lot of potential cases. But your work is not yet done. You still have to decide how much of it you need.

## II. HOW MUCH IS ENOUGH?

Lawyers win cases with primary mandatory authority most of the time. Occasionally, you will convince your client to behave according to a standard higher than the one required by your jurisdiction, and sometimes you will get a judge to adopt that interpretation of the law of consideration proposed by Professor Corbin. Most of the time, however, you will work with authority that is both primary and mandatory. So, you may ask, why bother with persuasive authority at all? Who cares about secondary authority? Isn't it still the rule that you should never trust any case over 30 years old? So what if some pointy-headed academic (or worse, some arrogant second-year law student) proposed some wacky theory of assumption of risk (Mike Tyson's “She-knew-I-was-a-violent-sexually-aggressive-jerk-so-she-must-have-been-asking-for-it” defense comes to mind)? Judges do not read that stuff, so why should you?

There are, I think, two answers. I like them both, but even if only one motivates you, that is ok, so long as it has the desired effect. The first is that you will win more cases (and, perhaps, get better grades) if you have a broader, more comprehensive view of the law, its trends, its scope, and its context. You will probably like that reason better for the next five to seven years, which is fine. The second is that you will have more intellectual integrity and you will stay interested in your chosen profession longer if you have a broader, more comprehensive view of the law, its trends,

its scope, and its context. This one may not matter until you hit your mid-life crisis, but it may get you through it.

If either of these reasons is true, then you are still left with the question of how much authority is enough. Unfortunately, the answer is: exactly as much as you need to make your point, no less, and no more. The problem with that answer, of course, is that the quantity will be radically different depending on the problem and how much is available to solve it. In some situations, there will be a statute clearly on point, and one supreme court case interpreting the statute on facts very similar to your own. Does that mean you automatically win (or lose)? Of course not. Sometimes you *will* win with this much, but even if the case looks like a winner, it may be that 39 other jurisdictions with a similar statute and cases with similar facts have gone the other way (that is persuasive authority). If that is true, you can bet that the other side is going to point that out to the court. You certainly do not want to be caught with your research incomplete. What if your great interpretive case is 46 years old? What if it looks like an absurd case, even to you? What if . . .? Hmmmmm.

You see, *that is* where the law is, in the creases, both in the creases you see and in the ones you create. The answer is, you cannot tell where your case fits unless you can see the whole dress, so to speak. The whole dress is out there in persuasive authority.

This was just an example of a “simple” research problem. Most are more complicated than that. Before you run screaming, however, let me try to comfort you by saying that what you are learning in law school is to develop judgment, that filter that I wrote about earlier. You will develop a sense of how far to go. Your professors, law partners, and judges will help you hone that sense. You will not have it right away. Yes, you will probably feel overwhelmed at first. Yes, you will probably err on the side of way too much research at first. That is why we try to give things to you in manageable pieces in the beginning, even if they do not feel manageable to you. Try to have some patience, faith, and hope in the education process.

Your research usually requires finding all primary mandatory authority, plus enough persuasive authority to convince yourself or the client (judge, opposing party, senior partner) that you are right (or have a plausible argument, if that is the best you can do). Obviously, you will have to get into at least some persuasive authority before you can decide that you have gone far enough and

that you are right. Sometimes you will start with secondary authority because you know nothing and it helps you get the lay of the land. Then you go to primary authority, decide what is mandatory and what is persuasive, and then make your decision about what is right or plausible. Again, at first this will be difficult. As you develop skill through hard work and training and thinking, it gets faster, and you become more efficient.

Do not forget to use your head, that thing that you brought along with you to law school. It got you here in the first place. If an outcome seems wrong, maybe it is. However, in law, that seeming is never more than a starting place, and you will get creamed if you walk into a classroom or courtroom or office and say: "I think we are going to lose because the case seems wrong." You have to show in every painstaking step of your analysis that such is true. Your instincts may point you in the right direction, but your training, research, thinking and writing have to be involved in showing that your initial instinct was correct. By the way, be prepared to discover that your instinct was wrong. It happens all the time. Keep an open mind. Try creative possibilities. Play devil's advocate.

This is all relevant to the question of how much is enough. When you think that you have exhausted all of the possible theories, found all of the relevant statutes, examined all of the cases, then you are ready to write up the answer, and give advice or argue your point.

### III. CATEGORIES OF AUTHORITY

This section of the reading will run down the common characteristics of the major categories of authority. The order in which I present them is somewhat logical—I hope—and reflective of the authority-generating process in our legal system. Although there may be lots of practitioners and scholars criticizing the effect or absence of a body of law, the "law" typically starts with the passage of some kind of statute. Then, if it is a statute that has to be implemented by an agency, some administrative regulations may be promulgated. If it is not such a statute, then it will be interpreted in the courts as soon as people start violating it. When courts interpret statutes, many things can happen. An involved administrative agency can promulgate regulations to fill gaps it had not noticed before, or to undo what the court just did. Scholars may write law review articles about that decision or that area of the law. The legislature may amend the statute in response to

the court's action. The case may be reversed on appeal. The case may be the subject of a review of the law on that point in all jurisdictions. I will review the three major types of primary authority first, and then move on to some of the secondary authorities available. That is because my bias is toward starting with what the law is, moving on to what the law means in certain circumstances, and then thinking about what the law might or should be if it were more perfect.

### A. *Statutes*

What is a statute? Before you became one of the chosen few, you probably thought the "law" was what lawyers commonly refer to as "statutes." Those are the 10,000 commandments of the community, county, state, federal district, federal circuit, and country in which you live. They are printed in books called *The Code of This*, *The Codified Statutes of That*, and *The Laws of The Other Thing*. They are the collective values of the community, created by the representative bodies democratically elected by you (if you vote, which I hope you do, but you have to obey their laws even if you do not), crafted, drafted, debated, modified, and finally passed and signed by the Executive (School Director, Mayor, Governor, or President). They are the law of the people and by the people.

You can find this kind of primary authority in two kinds of books: codified statutes and session laws. A book of codified statutes will usually be the place to start because someone has already gone to the trouble of categorizing all of the statutes (criminal, commercial, municipal, tax, etc.) in groups that make a little more sense than the groups in which they are churned out of the Legislature. If you are looking for statutes that tell you something about the criminal implications of certain kinds of tax evasion, say, income from autographing baseballs, you will probably look either in the tax statutes or the criminal statutes. Somebody has already created two *titles* for you to research. A *title* is a category of law that has enough substantive identity for it to have its own separate name. Title 25 of the United States Code covers Indians. Title 26 of the Pennsylvania Consolidated Statutes Annotated covers the power of eminent domain. In these titles you will find the requirements, exhortations, mays, cans, and shalls, of the law in that area as the creating legislature currently has written it. They are just books. They have nicer covers than the latest John Grisham novel, even the hardcover version, but they are just books all the same. Once you have read through the

index and figured out which titles will probably cover your problem, you just go to them and start reading them.

A session law is a book that has statutes in them in the order that the legislature passed them. You can see why that could be an inconvenient place to start your research. Once you have done your codified statute search, however, there will be times when it is a good idea to check the session law. The codified statute will have the information you need to get right to the session law, so it's not as hard to go there second as it is to go there first. Session law books are usually in close proximity to the codified statute books in the library. They are usually quite drab looking, so if you have a keen eye for color, leave it home when looking for session laws. Session laws are important because they often have some text that does not get in to the codified statute. Some session laws are not codified at all (like annual budget statutes), so there will be times when you may have to start in the session laws. That tends to be rather specialized.

### *B. Administrative Regulations*

Some statutes must be implemented by executive agencies. When Congress passed the Clean Water Act, it was left to the Environmental Protection Agency to make sure that the Act was enforced. Congress *delegated* to the EPA the power to promulgate regulations consistent with its charge to enforce this Act. That is typically how administrative regulations come to be. It is like telling the babysitter give the kids dinner, make sure they eat it, clean the kitchen, play with the kids, and get them to bed at a reasonable time. That is the statute. You have just delegated to the babysitter (call her the Kid Protection Agency) the authority to make specific rules about how that will happen. She decides whether it is Spaghettios or Pizza Hut; dessert or punishment incentive; whether the kids clean or she does; football, Monopoly, or MortalKombat; and whether "reasonable" means 7:30 or 10:00. Those are like regulations. They are derived from the authority granted by the higher legislative power: Mom and Dad or Congress. They are quite specific. I certainly do not have to tell anyone who has had or been a babysitter that they have the full force and effect of law. They are as mandatory as a statute—usually. They may not, however, exceed the scope of authority delegated. No jumping off the roof into the pool.

Administrative regulations have their own set of books. Each State has its own regulation books, and so does the Federal Gov-

ernment. The Federal one is called the Code of Federal Regulations, or CFR. Regulation books usually hang out near the statute books for their jurisdiction, if the library has them. Although most law libraries will not have all state regulation books, they will almost always have the CFR, and they will also have the ones for your state and some neighboring state jurisdictions. Regulations change faster than statutes (sometimes they change faster than the weather!), so you will often find them in a fancy binder or a soft-covered book that can be replaced frequently at minimum cost.

So now you have found the statutes and regulations (if any) that you need. Your next journey is into “cases.”

### C. *Case Law or Opinions*

You will read a lot of “cases” while you are in law school. A “case” is more accurately called a judicial opinion, but we tend to be a little sloppy on this one and refer to such opinions as “cases.” While you are in law school, you will read a lot of appellate opinions, cases decided by judges either in the jurisdiction’s court of appeals or in its supreme court. What that means is that the case has already been decided by a trial court, usually without an opinion and even more often without publication. Since there is usually one winner and one loser in our adversarial system of justice, the trial court’s decision almost invariably annoys one party. That party may appeal. If the appellate court thinks that the case is interesting enough legally (or if it has to because of some statute), it will hear the appeal and render a decision. Many appellate decisions include an opinion. These are what fill your casebooks. They also fill the library, and they can be a bit daunting to wade into.

Because we have a federal system, what we as lawyers end up with is, basically, 50 states’ worth of judicial opinions and one federal jurisdiction’s worth of judicial opinions. Just as each state keeps its own statutes and regulations, so, too does each keep its own opinions in books. So does the Federal jurisdiction. These books are called *reporters*. A *reporter* is simply a book (usually as drab as a session law) which contains the judicial opinions of the judges of that jurisdiction. There are reporter books for some trial courts, like the federal district courts. There are reporter books for appellate courts. There are reporter books for supreme courts. There are lots of reporters in libraries (ours devotes one-quarter of

the floor space for them), but you almost never need to look through them all.

You can break down reporters by court rank (trial, appellate, supreme), but that is usually because you are trying to find the cases that will be mandatory primary precedent (you know what that means now!). That is really about solving legal problems. I am more interested in making you comfortable with what the books are. The other helpful distinction between reporters is "official" versus "unofficial" or "commercial" (both terms are used for the same group of reporters). An "official" reporter is one published by the government of the jurisdiction where the judge is deciding. The taxpayers foot the bill. An "unofficial" or "commercial" reporter is one that is published by a private publishing company. Like any business, it gets its revenues from selling books. They also publish codified statutes, by the way.

Most jurisdictions have an official and a commercial reporter. You will tend to rely on commercial reporters for lots of reasons that you will get into as the semester gets underway, but rest assured: commercial reporters do not change the court's words and every word that is in the official reporter is in the commercial one. In fact, commercial reporters are of such high quality that some jurisdictions have stopped publishing official reporters altogether and rely on commercial reporters as the *only* source of primary case authority. The most commonly-used commercial reporter, West's Reports of Decisions, is published as a regional publication, with several states contributing their opinions. The commercial reporter that has Pennsylvania court opinions in it is called the Atlantic Reporter, for example.

In order to timely publish judicial opinions, reporter publishers don't categorize and classify them beforehand. They just collect opinions until they have about 1200 pages worth, stick a binding around them and send them out. You obviously need a "finding aid" to find relevant case law, but that is beyond the scope of this reading. Once you have found all such opinions, however, you have found all of the primary authority.

#### *D. Secondary Authority*

As I wrote before, everything else is secondary. There are legal periodicals, which usually cover very narrow topics, though they do it comprehensively. If you have a very narrow question and you find a pertinent periodical article, it can be a gold mine of statutes and cases for you. They are also helpful to see what alter-

native theories you might be able to offer. In some instances, they contain information about trends in the law. You have to be careful about that, though, because writers can have agendas that don't necessarily comport with real trends in the law.

A unique source of information is something called A.L.R. or American Law Reports. It is like a cross between a periodical article, because of the narrowness and comprehensiveness, and an encyclopedia, because of the dispassion of the presentation. An A.L.R. annotation (that is what the entries are called: annotations) gives you a synopsis of the narrow question in all jurisdictions and short case synopses of every significant case that has dealt with the question. Again, if you have a question to which a published annotation is relevant, it is a valuable time saver for finding case law and figuring out where your jurisdiction stands in relation to others on the question.

There are a couple of secondary sources that look a lot like statutes. These are Restatements of the Law of (*pick your banana*: torts, contracts, etc.) and Uniform Laws. They are secondary authority because they have not been adopted by a governmental actor acting in its capacity as a lawmaking body. They are drafted by experts in the field of the Restatement or Uniform Law. Some of them have been adopted as primary authority in some jurisdictions. The Uniform Commercial Code has been adopted by 49 states. Section 402A of the Restatement of the Law of Torts [the section on strict products liability] has been litigated and decided in every state jurisdiction (I think) with varying outcomes.

Treatises are books, usually one or a few volumes, written by experts in subfields of law. If you own a hornbook, you own a kind of treatise. Prosser on Torts, Williston on Contracts, are two examples of treatises. They can be very broad in their coverage and they can be very narrow. They are good for background reading. They contain a lot of black-letter law, but you can't assume that they contain the black-letter law for your jurisdiction. In fact, you should assume that they do not.

These are some, not all, of the secondary sources you may call on to help you solve legal problems.

### CONCLUSION

In summary, remember that the materials you use as a lawyer will be as varied as the problems you solve. You will never need them all. If you have good triage skills, the potential resources out there will rarely overwhelm you. Good luck.



**\*\* Acknowledgement:** With the exception of *Cohen v. California* no authorities have been cited and all examples are used solely for the purpose of explaining the methods and sources used in proper legal research. We hope this essay is a helpful starting point.